

**U.S. Department of the Interior  
Bureau of Land Management**

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**Record of Decision  
September 2010**

**Silver State Solar Energy Project**

**APPLICANT**

**NextLight Renewable Power, LLC  
353 Sacramento St, Suite 2100,  
San Francisco, CA 94111**

**GENERAL LOCATION**

**The proposed action is located on public lands managed by the Bureau of Land Management in Clark County, Nevada, 2 miles east of Primm, Nevada, along the California/Nevada state line.**

**BLM CASE FILE SERIAL NUMBER(S)**

**N-85077  
N-85801**

**PREPARING OFFICE**

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**Appendix A - Mitigation Measures**

**Appendix B - Right of Way Grant**

**Appendix C - Biological Opinion**

## **I. Introduction**

### **1. Background**

NextLight Renewable Power, LLC submitted right-of-way (ROW) applications for the Silver State Solar Energy Project on March 21, 2008, and August 25, 2008, (N-85077 and N-85801) for the authorization of solar photovoltaic (PV) power plant facilities to generate 400 megawatts (MW) of power on public lands administered by the Bureau of Land Management (BLM). The project site is located on unincorporated public lands approximately two miles east of Primm, Nevada in the Ivanpah Valley, 40 miles south of the City of Las Vegas, in Clark County, Nevada.

The BLM has prepared an environmental impact statement (EIS) in compliance with the National Environmental Policy Act (NEPA) of 1969 in response to the ROW applications.

Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761-1771, authorizes the BLM, acting on behalf of the Secretary of the Interior, to issue a ROW grant on, over, under, or through the public lands for systems for generation, transmission, and distribution of electric energy. The BLM's implementation of its statutory direction for ROW authorizations is detailed in 43 CFR Part 2800.

The Authorized Officer administers the ROW authorization and ensures compliance with the terms and conditions of the ROW lease/grant. The term "Authorized Officer" means any employee of the Department of the Interior to whom has been delegated the authority to perform the duties described in 43 CFR Part 2800. In respect to this specific ROW authorization, this authority has been delegated to the Field Manager, Las Vegas Field Office, Bureau of Land Management.

### **2. Decisions to be made**

The NEPA analysis contained in the Silver State Solar Energy Project EIS considered the following decisions to be made:

- Approve the Proposed Action or Alternative, in whole or in part, and grant a ROW lease/grant to the Applicant,
- Approve the Proposed Action or Alternative, in whole or in part, with additional mitigation measures and grant a ROW lease/grant to the Applicant; or
- Deny the ROW application.

## **II. Mitigation and Monitoring**

### **1. Required Mitigation**

Mitigation measures required for the implementation of the approved action are outlined in Appendix A attached to this Record of Decision (ROD) and will be incorporated into

the ROW authorization as stipulations. The ROW lease/grant stipulations are included as Appendix B. These mitigation measures will be strictly adhered to throughout the duration of all project activities and are considered essential elements of the project. Application of these measures will reduce the impacts to BLM-administered lands and resources as described in the Final EIS.

## **2. Monitoring and Enforcement**

The ROW authorization provides the legal authority to enforce compliance with all mitigation measures required for implementation in this ROD, including the associated terms and conditions of the Biological Opinion issued by the U.S. Fish and Wildlife Service. Monitoring will occur throughout the duration of the project for each component of construction, operation, maintenance and termination of the solar facility.

## **III. Alternatives Including The Proposed Action**

Three alternatives were analyzed in the FEIS.

**Alternative 1: No Action.** The No Action Alternative assumes the ROW application would be denied and the proposed project would not be built.

**Alternative 2: Proposed Action.** The Proposed Action Alternative analyzes construction, operation, maintenance and decommissioning of a solar facility utilizing passive photovoltaic (PV) technology. The project facilities would be constructed in three separate phases proposed to have a total surface disturbance of approximately 2,966 acres and would generate approximately 400MW of power. Phase 1 of the project is proposed to generate 60MW of power, and Phases 2 and 3 to generate 340MW of power (140MW and 200MW respectively). The overall project consists of two independent facilities, represented by two ROW applications generally known as Silver State North (Phase 1) and Silver State South (Phases 2 and 3).

Under the Proposed Action Alternative, each facility component would be constructed as power purchase agreements and transmission infrastructure become available to bring the generated power to the market. The Proposed Action also includes drainage controls that would consist of a series of up to five earthen drainage control berms that would contain surface runoff flows to existing primary drainages (storm water flow corridors) across the site.

The Proposed Action Alternative (Alternative 2) is also the environmentally preferable alternative. This alternative disturbs less acreage and, therefore, limits impacts to desert tortoise habitat. Drainage structures provide the necessary attenuation of storm water run-off without significantly altering existing flow regimes. Consequently, the natural function of the alluvial fan is maintained in terms of storm water volume, velocity, depth, sediment load, flow location and flow pattern.

**Alternative 3: Modified Site Layout Alternative.** The Modified Site Layout Alternative is the same as the Proposed Action Alternative but contains additional drainage control structures to manage storm water run-off. The affected acreage for this alternative is approximately 4,818 acres, with 1,150 of these acres being affected temporarily.

#### **IV. Management Considerations**

The decision to approve the NextLight solar PV facility takes into account statutory, legal, and national policy considerations, as well as NextLight's technical and financial capability to construct the project for which the right of way is requested. The decision was also based on input provided by and received from the public, industry, as well as other federal and state agencies, including state public utility agencies. Through this review process, all practicable methods to reduce environmental harm have been incorporated into the decision and no undue or unnecessary degradation will result from this project. The decision is consistent with BLM's multiple use mandate under FLPMA.

Secretarial Order 3283 "Enhancing Renewable Energy Development on the Public Lands," was signed January 16, 2009. This Secretarial Order established renewable energy as a Departmental policy and committed the U.S. Department of the Interior (DOI) to achieve the goals established in Sec. 211 of the Energy Policy Act of 2005. The Energy Policy Act of 2005 encourages the development of renewable energy resources, including solar energy. Section 211 of the Act directs the Secretary of the Interior to approve at least 10,000MW of non-hydropower renewable energy projects on public lands by 2015. Secretarial Order 3285 "Renewable Energy Development by the Department of Interior," signed March 11, 2009, as amended on February 22, 2010, establishes the development of renewable energy as a priority for the DOI and creates a Departmental Task Force on Energy and Climate Change. The Congress, and the President, through the DOI, has established a national policy priority for renewable energy development. This project is considered a "fast-track" renewable project by the DOI because, in part, it is directly related to the policy goals established by the Energy Policy Act of 2005 and the Secretarial Orders identified above.

The BLM's purpose of this ROD is to respond to NextLight's application under Title V of FLPMA for a ROW lease/grant to construct, operate, and decommission a solar generation facility and associated infrastructure in compliance with the FLPMA, BLM ROW regulations (43 CFR Part 2800), and other applicable federal laws. Instruction Memorandum 2007-097, "Solar Energy Development Policy," dated April 4, 2007, establishes BLM policy to ensure the timely and efficient processing of energy ROWs for solar power on the public lands.

The State of Nevada has also enacted legislation requiring area utility companies to provide energy from renewable energy sources as part of the State's renewable portfolio standard to achieve a goal of 25 percent of its energy production from renewable energy sources by the year 2025.

## **1. Relationship to BLM and other Agency Plans, Programs, and Policies**

A biological opinion was approved for the project on September 16, 2010 and is attached to this ROD as Appendix C.

The entire 400-MW project is in conformance with the Southern Nevada District 1998 Las Vegas Resource Management Plan (RMP); however, when this RMP was completed in 1998, the BLM did not anticipate the numbers of large scale renewable energy developments that the Las Vegas Resource Area is currently considering and/or authorizing. In order to ensure that land allocations and decisions are appropriate, this RMP is currently undergoing a revision anticipated to be completed in 2012. This RMP revision is addressing large scale rights of way for development of renewable energy resources such as wind and solar energy, as well as visual resource management constraints and other appropriate management constraints, including but not limited to potential avoidance or exclusion areas for future rights of way within special designations such as areas of critical environmental concern and critical desert tortoise habitat. Any BLM authorizations that occur following the RMP Revision will need to conform to the revised RMP.

Separately, a Solar Energy Development Programmatic EIS (PEIS) is being prepared by the U.S. Department of Energy and the BLM. This study will assess environmental impacts related to agency-specific programs that would facilitate utility-scale solar energy development in the six western states of Arizona, California, Colorado, New Mexico, Nevada, and Utah. When completed, the PEIS may result in the amendment of existing RMPs to adopt new Bureau-wide solar energy policies, along with best management practices to reduce the environmental impacts of solar energy development.

## **V. Agency and Public Involvement**

### **1. Scoping**

An initial 30-day scoping period for the Silver State Energy Project was held from June 30, 2009 to July 31, 2009. The BLM extended the scoping period to October 19, 2009, to ensure that all interested parties could participate in the process. The scoping period commenced with publication of the Notice of Intent (NOI) in the *Federal Register* (74 FR 124: 31306-07). The NOI announced a period for public scoping of alternatives, issues, and impacts. The NOI also requested the views of other agencies as to the scope and content of the environmental information that was relevant to the statutory responsibilities or areas of expertise for those agencies. Federal, state, and local agencies, as well as individuals or organizations that were interested or may be affected by the BLM's decision on this project, were invited to participate in the scoping process and, if eligible, could request to participate as a cooperating agency. In addition to verbal comments and written comments received during these scoping meetings, the BLM received 33 electronic comment letters and/or emails from private citizens, government

agencies, non-governmental organizations (NGOs), and business associations by the October 19, 2009 close of scoping. The BLM also used the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3).

## **2. DEIS Public Comment Period**

The BLM held a 45-day public comment period starting with publication of the Notice of Availability of the Draft Environmental Impact Statement (DEIS) by the Environmental Protection Agency (EPA) and the BLM on April 16, 2010, in the *Federal Register*. The BLM received oral testimony at three public meetings held on May 11, 12, and 13, 2010, in Primm, Henderson (Las Vegas), and Jean, respectively. Another 33 comment letters were received during the 45-day public comment period. The BLM reviewed each comment and developed responses to all substantive comments based on guidance found in the Council on Environmental Quality (CEQ) regulations (40 CFR 1503.4.) As a result of this review, the EIS has been modified to supplement and improve the analysis.

## **3. FEIS Period**

The Notice of Availability (NOA) for the FEIS was published by the Environmental Protection Agency (EPA) on Friday, September 10, 2010, in the *Federal Register* (75 FR 175: 55326 and <http://edocket.access.gpo.gov/2010/pdf/2010-22617.pdf>). Interested parties and the public were notified by a press release and by direct mail. Hard copies and CD-ROM versions of the FEIS were made available at the Las Vegas Field Office on September 10, 2010. An electronic copy of the FEIS is posted on the internet at [http://www.blm.gov/nv/st/en/fo/lvfo/blm\\_programs/energy.html](http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy.html).

# **VI. Decision Rationale**

The BLM is considering the project as two independent applications. The applications are for Silver State North (N-85077) and Silver State South (N-85801). These applications were analyzed in one EIS through the NEPA process.

The BLM, after careful consideration of the potential effects of the proposed project has decided to authorize only Phase 1 (60-MW direct current/50-MW alternating current) of the project for the Silver State solar energy facility. The Phase 1 60-MW DC facility (50-MW AC) is within the range of the alternatives analyzed in this EIS and its environmental impacts have been fully considered.

Authorization of Phase 1 of the facility satisfies the purpose and need of the NEPA analysis contained in the EIS to respond to NextLight's application and to determine whether to approve, approve with modifications, or deny issuance of a ROW lease/grant, taking into consideration the provisions of the Energy Policy Act of 2005 and other applicable Federal laws, regulations, and policies.

The BLM considered several key factors in its decision to authorize only a portion of the entire project. First, the Silver State North portion of the project (Phase 1) is a stand-alone renewable energy generating facility and has an existing power purchase agreement with NV Energy. The Silver State North project also has an approved interconnection agreement with NV Energy for transmission of power to the Walter M. Higgins Power Generating Station Switchyard. In consideration of reducing the effects on individual desert tortoises and their translocation from the project area, limiting the authorization to this phase of the project disturbs fewer acres of desert tortoise habitat and limits translocation to about one dozen individual animals.

Another key factor in BLM's decision is that the Silver State South portion of the project requires additional wildlife consideration and potentially further consultation with the U.S. Fish and Wildlife Service due to the higher density of tortoise that reside in that portion of the project area. Tortoises in both the north and south portions of the project area require translocation and both the BLM and the Fish and Wildlife would like to better understand the effects of translocation on individual tortoise and the population of tortoise in the translocation area.

The BLM is also responsible for managing several other resource use conflicts in the project area, including, but not limited to, off-road vehicle use and recreation and how potential locatable minerals will be managed. All of these resources and resource uses will require further consideration to resolve current and future conflicts that are not managed with standard right of way stipulations and/or terms and conditions. Moreover, since the Silver State South portion of the project area is still pending a power purchase agreement and infrastructure that would be necessary for transmission interconnection, the BLM has determined limiting the authorization to the Silver State North portion of the project will not impair NextLight's ability to construct Phase 1 of the project.

It is my decision to approve the issuance of a ROW lease/grant offer for a solar PV power generation facility identified as Phase 1, and described in the Proposed Action of the FEIS (Alternative 2), along with all associated facilities needed for the development and operation of Phase 1 of the facility, including mitigation measures and ROW lease/grant stipulations shown in Appendixes A and B.

The ROW application for the Silver State South portion of the Silver State Energy Project (N-85801) filed by NextLight Renewable Power, LLC, for Phases 2 and 3 remains as a pending application. Any future authorization related to this application (N-85801) may require supplemental NEPA analysis and additional public involvement.

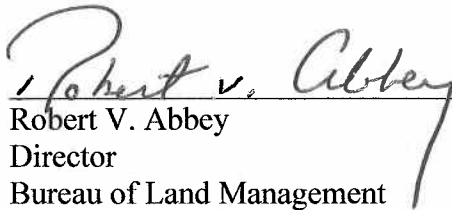


## **VII. Final Agency Action**

### **1 Right-of-Way Authorization**

It is my decision to approve a solar energy right-of-way lease/grant to NextLight Renewable Power LLC, subject to the terms, conditions, stipulations, Plan of Development, and environmental protection measures developed by the Department of the Interior and reflected in this Record of Decision. This decision is effective on the date this Record of Decision is signed.

Approved by:


  
\_\_\_\_\_  
Robert V. Abbey  
Director  
Bureau of Land Management

10-12-10  
\_\_\_\_\_  
Date

### **2 Secretarial Approval**

I hereby approve this decision. My approval of this decision constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4. Any challenge to this decision, including the BLM Authorized Officer's issuance of the right-of-way as directed by this decision, must be brought in federal district court.

Approved by:

  
\_\_\_\_\_  
Ken Salazar  
Secretary  
U.S. Department of the Interior

OCT 12 2010  
\_\_\_\_\_  
Date